IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 413/2004

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : September 22, 2006

By this second appeal, the appellant challenges the judgment and decree dated 19th June 2004 passed by 3rd Adhoc Additional District Judge, Wardha in Regular Civil Appeal No.148/1994 dismissing the appeal against judgment and decree dated 30/9/1994 passed by 6th Joint Civil Judge, Jr. Dn. Wardha in Regular Civil Suit No. 407/88. The respondent herein filed the above suit for arrears of rent, eviction and possession of the suit house which was given to the appellant on monthly tenancy of Rs.100/- beginning from 1st of every month. According to the respondent-plaintiff, he terminated the tenancy by notice dated 4.4.1988 calling

upon the appellant-defendant to vacate the suit premises by the midnight of 30.4.1988. The suit was contested. The trial Court upon appreciation of the evidence led by the parties decreed the suit. Although the appeal was preferred by the defendant on several grounds only one point was urged before the lower appellate court i.e. notice terminating the tenancy was not legal and valid. It was urged before the lower appellate Court that clear 15 days' notice as required under section 106 of Transfer of Property Act was not given. The lower appellate Court upon appreciation of the evidence came to the conclusion that notice dated 4.4.1988 was issued to the appellant-defendant and the same was received by defendant ion 9.4.1988 and the acknowledgment of the notice was received back by the plaintiff on 13.4.1988. Consequently, the appellate Court held that the notice issued by the plaintiff was legal and valid.

Mr. Jachak, learned counsel for the

appellant urged only one ground in support of this appeal. He urged that before filing eviction proceedings, no permission as required under Clause 13 (1) C. P. & Berar Letting of Premises and Rent Control Order, 1949 was not obtained by the respondent-plaintiff.

Having considered the submission made by learned counsel for the appellant, I do not find any merit therein. Firstly such a point was not taken specifically in the written statement filed by the appellant-defendant and secondly, the appellant urged only one ground about the validity of notice under section 106 of Transfer of Property Act in support of his appeal before the lower appellate Court. I am, therefore, of the opinion that the appellant cannot be permitted to urge this ground in second appeal for the first time. Accordingly, I do not find any merit in the appeal and the same is summarily rejected with no order as to costs.

In view of dismissal of appeal, the application has become infructuous. Consequently, the application stands dismissed as infructuous.

JUDGE

A.